APPENDIX A

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

Docket No. 103543

[Filed January 25, 2008]

THE VILLAGE OF MUNDELEIN,
Appellant,

v.

WISCONSIN CENTRAL RAILROAD,
Appellee.

JUSTICE KILBRIDE delivered the judgment of the court, with opinion.

Chief Justice Thomas and Justices Freeman, Fitzgerald, Garman, Karmeier, and Burke concurred in the judgment and opinion.

OPINION

Defendant, Wisconsin Central Railroad (Wisconsin Central), was issued a citation for violating an ordinance enacted by plaintiff, the Village of Mundelein (Village), prohibiting obstruction of a railroad-highway grade crossing. Following a bench

trial, the trial court found Wisconsin Central guilty of violating the ordinance and imposed a fine of $14,000 plus costs. The appellate court reversed the trial court's judgment and vacated the fine, holding that the Village's ordinance is preempted by the Federal Railroad Safety Authorization Act of 1994 (FRSA) (49 U.S.C. §20101 *et seq.* (2000)). 367 Ill. App. 3d 417. For the reasons that follow, we agree that the Village's ordinance is preempted by the FRSA. Accordingly, we affirm the judgment of the appellate court.

I. BACKGROUND

The Village charged Wisconsin Central with violating its ordinance by allowing a train to block a railroad-highway grade crossing for 157 minutes. The Village's ordinance prohibits obstruction of public travel on a highway at a railroad crossing for more than 10 minutes, except when a train or railroad car is continuously moving or cannot be moved due to circumstances beyond the rail carrier's reasonable control. Prior to trial, Wisconsin Central filed a brief and offer of proof contending it did not violate the ordinance because the train was stopped due to circumstances beyond its reasonable control. Wisconsin Central also argued that the FRSA preempts enforcement of the ordinance.

At the bench trial, train conductor Bernard Kareka testified that he and the engineer assumed control of the train in Lake Villa, Illinois. The train had been left there by the previous crew on their way southbound from Wisconsin to Schiller Park, Illinois. Consisting of 3 locomotive engines and 119 cars, the train had stopped in Lake Villa for approximately three to four

hours. The previous crew departed and left a note stating that the train had "bad air," meaning there was a problem with the air brakes. The previous crew had repaired a couple of air leaks by changing the gaskets between the air hoses. Based upon the note, Kareka believed the previous crew had repaired any problem with the air brakes.

Kareka testified that he looked at several cars behind the locomotives to locate the hand brakes while the engineer inspected the locomotives. They released the hand brakes identified as being set in the previous crew's report. Kareka and the engineer then conducted a job briefing, reviewed reports from the previous crew, and ensured that any cars containing hazardous materials were placed in the proper location in the train.

Kareka further testified that federal regulations require verification that the air brakes are in working order before moving the train. The crew, therefore, conducted tests on the air brake system. The crew verified that the air pressure on the rear of the train was within 15 pounds of the pressure on the front as required by federal regulations. The engineer conducted a "set and release" test to verify that the brakes were in working order and there was sufficient air pressure throughout the brake system. Kareka testified that, as a crew taking over operation of a train already underway, they were not required to inspect the entire train or perform any tests beyond those they completed.

After completing the inspections and tests, the train left Lake Villa heading south toward the Village.

Upon approaching the Village, a "hot box detector" went off, indicating that equipment was dragging from the rear car of the train. The engineer began slowing the train when a sudden loss of air pressure caused the emergency brakes to apply on each car. The train suddenly stopped.

When the crew was unable to restore air pressure in the brake system on the rear of the train, Kareka got out to make a visual inspection. He noted that his footing was "very bad" and he had to hold onto the train cars to keep his balance due to the rough roadbed and the angle of the embankment. In walking the length of the train, Kareka discovered that an "angle cock" was misaligned on one of the cars. Kareka explained that an angle cock is a valve that regulates the air flow through the brake line in the cars. He asserted that the angle cock could have been knocked out of position by debris, vibration from the moving train, or sabotage. Kareka stated that when the engineer slowed the train to pass through the Village, the brakes on the front of the train would have set faster than those on the rear due to the angle cock's misalignment. This condition caused the rear portion of the train to collide with the front braking portion.

Kareka straightened the angle cock, continued the inspection, and discovered that the "drawbar" had broken and fallen off the rear of the seventy-sixth car, six cars behind the one with the misaligned angle cock. The train had separated and the emergency brakes applied due to the broken drawbar. The drawbar had fallen under the following car damaging the air hose.

After assessing the damage, the crew positioned the separated rear portion of the train to avoid obstructing any highway crossing. The crew proceeded south with the front part of the train and left the car with the broken drawbar on a spur track. The crew then reversed the train and returned to reconnect with the rear portion left on the track.

When they reached the rear portion of the train, the crew began the process of reconnecting it to the front portion. Kareka replaced the damaged air hose and reconnected the train. The crew then conducted brake tests, restored the air pressure to the required level, and moved the train to a location blocking Hawley Street in the Village, where they removed the rear car with the dragging equipment. The crew was then required by federal regulations to perform another air pressure test on the brake system. The crew was unable to restore the brake system air pressure to the required level on the rear of the train. Kareka reinspected the train, checking for leaks in the brake system. A crew from another train assisted Kareka in inspecting the brake system for leaks.

While the train continued to block the Hawley Street crossing, a Metra commuter train arrived at the Village station. The passengers from the Metra train could not get to their cars because Wisconsin Central's train was blocking access to the parking lot. The Wisconsin Central train was then separated to allow the passengers access to the parking lot. When the passengers cleared the tracks, the train was reconnected. However, the crew was still unable to restore the brake system air pressure in the rear portion of the train to the required level.

While Kareka and other employees tried to correct the problem, another Metra train arrived at the station. The crew again separated the train to allow Metra passengers access to the parking lot. At that point, a Wisconsin Central dispatcher directed the crew to take the front portion of the train to Schiller Park. The crew verified that the front portion of the train had adequate air pressure and proceeded south to Schiller Park. The rear portion was later attached to another train and brought to Schiller Park. The parties stipulated that the train blocked the Hawley Street crossing for 157 minutes.

After hearing closing arguments by the parties, the trial court asserted that if the crew had completed a visual inspection of the train before leaving Lake Villa "there may have not been a problem." A visual inspection may have revealed the misaligned angle cock and could have prevented the subsequent problems with the train in the Village. According to the court, a visual inspection of the train was within Wisconsin Central's reasonable control. Therefore, Wisconsin Central violated the ordinance because the circumstances resulting in obstruction of the Hawley Street crossing were within its reasonable control. The trial court further found that the Village's ordinance was not preempted by the FRSA. Accordingly, the trial court found Wisconsin Central guilty of violating the ordinance and imposed a fine of $14,000 plus costs.

On appeal, Wisconsin Central argued that enforcement of the Village's ordinance is preempted by the FRSA and by requiring a visual inspection of the train before leaving Lake Villa, the trial court imposed additional duties of inspection in an area of

law preempted by the FRSA. 367 Ill. App. 3d at 421. The appellate court held that the Village's ordinance is preempted. 367 Ill. App. 3d at 432. The appellate court, therefore, declined to address the trial court's application of the ordinance to the facts of this case. 367 Ill. App. 3d at 432. The appellate court reversed the trial court's judgment and vacated the fine. 367 Ill. App. 3d at 432.

We allowed the Village's petition for leave to appeal. 177 Ill. 2d R. 315(a). We then allowed the Illinois Municipal League to file an *amicus curiae* brief in support of the Village and the Association of American Railroads to file an *amicus curiae* brief in support of Wisconsin Central. 155 Ill. 2d R. 345.

II. ANALYSIS

On appeal to this court, the Village contends that: (1) its ordinance is not preempted by the FRSA; and (2) the trial court did not err in finding that Wisconsin Central violated the ordinance because the cause of the obstruction was within Wisconsin Central's reasonable control. The United States Supreme Court has stated that a preemption defense raises a threshold issue. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56, 154 L. Ed. 2d 466, 473, 123 S. Ct. 518, 522 (2002). The Court has, therefore, declined to address the merits or viability of underlying claims before considering preemption. *Sprietsma*, 537 U.S. at 56, 154 L. Ed. 2d at 473, 123 S. Ct. at 522. Likewise, when a preemption issue has been raised in this court, we have addressed it first before proceeding to the merits of the parties' specific claims. *See Kinkel v. Cingular Wireless, LLC*, 223 Ill. 2d 1, 15 (2006) (stating further analysis of the

enforceability of an arbitration clause would not be necessary if the plaintiff's claim were preempted by federal law). Accordingly, we will first address the parties' preemption arguments.

The supremacy clause of the United States Constitution provides that "[t]his Constitution, and the Laws of the United States *** shall be the supreme Law of the Land *** any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2. State law is preempted under the supremacy clause in three circumstances: (1) when the express language of a federal statute indicates an intent to preempt state law; (2) when the scope of a federal regulation is so pervasive that it implies an intent to occupy a field exclusively; and (3) when state law actually conflicts with federal law. *English v. General Electric Co.*, 496 U.S. 72, 78-79, 110 L. Ed. 2d 65, 74, 110 S. Ct. 2270, 2275 (1990).

The determination of whether state law is preempted turns on the intent of Congress. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604, 115 L. Ed. 2d 532, 542, 111 S. Ct. 2476, 2481 (1991). When interpreting a federal statute pertaining to a subject traditionally governed by state law, courts are reluctant to find preemption unless Congress' preemptive intent is clear and manifest. *CSX Transportation, Inc. v. Easterwood*, 507 U.S. 658, 664, 123 L. Ed. 2d 387, 396, 113 S. Ct. 1732, 1737 (1993); *Mortier*, 501 U.S. at 605, 115 L. Ed. 2d at 543, 111 S. Ct. at 2482. Whether a federal statute preempts a state or local enactment presents a question of law subject to *de novo* review. *Kinkel*, 223 Ill. 2d at 15,

citing *Schultz v. Northeast Illinois Regional Commuter R.R. Corp.*, 201 Ill. 2d 260, 288 (2002).

Congress enacted the FRSA in 1970 "to promote safety in *every area of railroad operations* and reduce railroad-related accidents and incidents." (Emphasis added.) 49 U.S.C. §20101 (2000). The FRSA grants the Secretary of Transportation the authority to "prescribe regulations and issue orders for every area of railroad safety." 49 U.S.C. §20103(a) (2000). The FRSA explicitly directs the Secretary of Transportation to develop and implement solutions to safety problems at grade crossings. 49 U.S.C. §20134 (2000).

The preemptive effect of regulations issued by the Secretary of Transportation is governed by an express preemption clause in section 20106 of the FRSA (49 U.S.C. §20106 (2000)). When a statute contains an express preemption clause, we must construe that provision with a focus on its plain language that necessarily bears the best evidence of Congress' intent. *Sprietsma*, 537 U.S. at 62-63, 154 L. Ed. 2d at 477, 123 S. Ct. at 526, quoting *Easterwood*, 507 U.S. at 664, 123 L. Ed. 2d at 396, 113 S. Ct. at 1737. Section 20106 provides that:

> "Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to

railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order–

(1) is necessary to eliminate or reduce an essentially local safety or security hazard;

(2) is not incompatible with a law, regulation, or order of the United States Government; and

(3) does not unreasonably burden interstate commerce." 49 U.S.C. §20106 (2000 & Supp. 2004).

By its terms, section 20106 applies only to laws, regulations, or orders "related to" railroad safety or security. 49 U.S.C. §20106 (Supp. 2004). The phrase "relating to" has been given a broad meaning. *Easterwood*, 507 U.S. at 664, 123 L. Ed. 2d at 397, 113 S. Ct. at 1738, citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-84, 119 L. Ed. 2d 157, 167-68, 112 S. Ct. 2031, 2037 (1992). The Supreme Court has interpreted that phrase to mean "having a connection with, or reference to," a certain subject matter. *Morales*, 504 U.S. at 384, 112 S. Ct. at 2037, 119 L. Ed. 2d at 167.

The Village has adopted by reference the blocked-crossing provision in the Illinois Vehicle Code (Code) (625 ILCS 5/1–100 *et seq.* (West 2004)). Mundelein Municipal Code §10.02.010 (1989). The ordinance at issue is set forth in section 18c–7402(1)(b) of the Code, providing that:

> "It is unlawful for a rail carrier to permit any train, railroad car or engine to obstruct public travel at a railroad-highway grade crossing for a period in excess of 10 minutes, except where such train or railroad car is continuously moving or cannot be moved by reason of circumstances over which the rail carrier has no reasonable control." 625 ILCS 5/18c–7402(1)(b) (West 2004).

The plain language of the ordinance applies exclusively to railroad operations, requiring rail carriers to prevent obstructions of highway grade crossings except in certain specified circumstances. Section 18c–7402 is entitled "Safety Requirements for Railroad Operations." 625 ILCS 5/18c–7402(1)(b) (West 2004). The section, therefore, refers to railroad safety requirements. A "connection with, or reference to," railroad safety is all that is required for application of section 20106. *See Morales*, 504 U.S. at 384, 119 L. Ed. 2d at 167, 112 S. Ct. at 2037. The Village's ordinance has the required connection with or reference to railroad safety and, therefore, it falls within the scope of section 20106.

Having determined that section 20106 applies, we must consider whether the Secretary of Transportation has issued regulations or orders that preempt the Village's ordinance. Section 20106 dictates that to preempt state law, a federal regulation must "cover" the same subject matter, not merely "touch upon" or "relate to" that subject matter. *Norfolk Southern Ry. Co. v. Shanklin*, 529 U.S. 344, 352, 146 L. Ed. 2d 374, 382, 120 S. Ct. 1467, 1473 (2000), citing *Easterwood*, 507 U.S. at 664, 123 L. Ed. 2d at 397, 113 S. Ct. at

1738. The term "cover" is restrictive, indicating that preemption will be found only if federal regulations "substantially subsume the subject matter of the relevant state law." *Easterwood*, 507 U.S. at 664-65, 123 L. Ed. 2d at 397, 113 S. Ct. at 1738. The party advocating preemption has the burden of establishing the preemptive effect of regulations. *Easterwood*, 507 U.S. at 664-65, 123 L. Ed. 2d at 397, 113 S. Ct. at 1738.

The preemption issue here depends on whether regulations issued by the Secretary of Transportation substantially subsume the subject matter of the Village's ordinance. The Village asserts that the subject matter of its ordinance is the amount of time a standing train may obstruct a highway grade crossing. On the subject matter of a state law, the Seventh Circuit Court of Appeals has stated:

> "'The subject matter of the state requirement' is the safety concerns that the state law addresses. [Citation.] Generally, determining the safety concerns that a state or federal requirement is aimed at will necessarily involve some level of generalization that requires backing away somewhat from the specific provisions at issue. [Citation.] Otherwise a state law could be preempted only if there were an identical federal regulation, and, as we noted, *Easterwood* teaches that this is not so. *See* 507 U.S. at 674, 113 S. Ct. 1732 (preemption found through series of related regulations and overall structure of the regulations, although no regulation directly addressed the state requirement); *see also*

Burlington Northern R.R., 880 F.2d at 1106 (FRA regulation permitting telemetry device rather than visual inspection preempted state law requiring trains to have a caboose because both were aimed at the safety concern of monitoring brakes and signals at the rear of the train). But with too much generalizing– 'public safety' or 'rail safety'–our analysis would be meaningless because all FRA regulations cover those concerns." *Burlington Northern & Santa Fe Ry. Co. v. Doyle*, 186 F.3d 790, 796 (7th Cir. 1999).

In a recent preemption case involving a blocked-crossing statute, the Pennsylvania Supreme Court rejected an argument similar to the one the Village advances on the subject matter of its ordinance. *See Krentz v. Consolidated R. Corp.*, 589 Pa. 576, 600-01, 910 A.2d 20, 35 (2006). The plaintiffs in *Krentz* argued that the Pennsylvania blocked-crossing statute was directed at limiting the amount of time a standing train may obstruct a highway crossing. *Krentz*, 589 Pa. at 600, 910 A.2d at 35. In determining the subject matter of the statute, the Pennsylvania Supreme Court focused on its location within the Pennsylvania statutes and its plain language. *Krentz*, 589 Pa. at 600-01, 910 A.2d at 35, citing *CSX Transportation, Inc. v. City of Plymouth*, 92 F. Supp. 2d 643, 651 (E.D. Mich. 2000), *aff'd*, 283 F.3d 812 (6th Cir. 2002). The court concluded that the codification and plain language of the blocked-crossing statute indicated that its subject matter was the regulation of the movement of trains. *Krentz*, 589 Pa. at 600-01, 910 A.2d at 35.

We agree that the codification and plain language of a statute are relevant in determining its subject matter. Here, the Village's ordinance is adopted by reference from section 18c–7402(1)(b) of the Illinois Vehicle Code. *See* 625 ILCS 5/18c–7402(1)(b) (West 2004). Although section 18c–7402(1)(b) is contained within the Code, it is more specifically located in subchapter 7 of the Illinois Commercial Transportation Law, entitled "Rail Carriers" (625 ILCS 5/18c–7101 *et seq.* (West 2004)). True to its name, each provision in that subchapter regulates railroads. Section 18c–7402(1)(b) is located in Article IV of subchapter 7. Article IV is entitled "Safety Requirements for Rail Carriers" (625 ILCS 5/18c–7401 *et seq.* (West 2004)). The specific title of section 18c–7402(1)(b) is "Safety Requirements for Railroad Operations" (625 ILCS 5/18c–7402 (West 2004)).

Most importantly, the plain language of the Village's ordinance applies only to rail carriers and prohibits them from allowing trains to obstruct public travel at highway grade crossings except in specified circumstances. The ordinance is aimed at keeping trains moving through highway grade crossings. As in *Krentz*, the plain language of the Village's ordinance is directed at regulating the movement of trains. Therefore, consistent with the context and plain language of the ordinance, we conclude that its subject matter is the movement of trains through grade crossings.

On this point, we note that the Village also argues the primary purpose of its ordinance is to allow police, fire, and ambulance services to be free from obstructions in responding to calls, while its secondary

purpose is to prevent traffic congestion. The Supreme Court, however, has refused to rely solely upon the professed purpose of a state law and has also examined its effect when determining its impact on a federal scheme. *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 105, 120 L. Ed. 2d 73, 89, 112 S. Ct. 2374, 2387 (1992). A state law may not frustrate the operation of federal law by claiming some purpose other than that specifically addressed by the federal law. Rather, the supremacy clause renders invalid any state legislation that frustrates the full effectiveness of federal law. *Gade*, 505 U.S. at 105-06, 120 L. Ed. 2d at 89, 112 S. Ct. at 2387, quoting *Perez v. Campbell*, 402 U.S. 637, 651-52, 29 L. Ed. 2d 233, 243-44, 91 S. Ct. 1704, 1712 (1971). Thus, "[i]t is the *effect* of the state law that matters in determining preemption, not its intent or purpose." (Emphasis in original.) *Teper v. Miller*, 82 F.3d 989, 995 (11th Cir. 1996). The effect of the ordinance, and its subject matter, is to regulate the movement of trains at highway grade crossings.

We must, therefore, determine whether the Secretary of Transportation has issued regulations that substantially subsume the subject of the movement of trains at grade crossings. The parties focus primarily on federal regulations governing train speed and air brake testing. The Village argues its ordinance does not regulate train speed because it does not apply to moving trains or prescribe a minimum speed at highway grade crossings. Further, the Village argues a railroad's compliance with federal air brake testing regulations may constitute a circumstance beyond its reasonable control. Thus, the ordinance may provide an affirmative defense when a train blocks a

crossing while the crew diligently conducts federally mandated air brake tests. Wisconsin Central responds that the Village's ordinance interferes with consistent application of federal regulations on speed and air brake testing.

Initially, we note that preemption does not depend upon a single federal regulation covering the subject matter of a state law. *Doyle*, 186 F.3d at 795. Rather, preemption may be found by examining related safety regulations and the overall structure of the regulations. *Doyle*, 186 F.3d at 795, citing *Easterwood*, 507 U.S. at 674, 123 L. Ed. 2d at 402-03, 113 S. Ct. at 1742.

The Secretary of Transportation has issued regulations setting maximum operating speeds for different classes of track. 49 C.F.R. §213.9(a) (1992); *Easterwood*, 507 U.S. at 662, 123 L. Ed. 2d at 395- 96, 113 S. Ct. at 1737. In *Easterwood*, the Supreme Court interpreted those regulations, asserting that "the speed limits must be read as not only establishing a ceiling, but also precluding additional state regulation." *Easterwood*, 507 U.S. at 674, 123 L. Ed. 2d at 402-03, 113 S. Ct. at 1742. The Court held that the regulations "should be understood as covering the subject matter of train speed with respect to track conditions, including the conditions posed by grade crossings." *Easterwood*, 507 U.S. at 675, 123 L. Ed. 2d at 403, 113 S. Ct. at 1743.

The Secretary has also issued detailed regulations on air brake testing. 49 C.F.R. pt. 232 (2006). Those regulations provide comprehensive requirements for inspection and testing of brake systems, and control

the timing and performance of tests and inspections. 49 C.F.R. §§232.201 through 232.219 (2006). Relevant to this case, the Secretary has issued regulations establishing the testing required following the removal of a car from a train and the interruption of brake pipe continuity. 49 C.F.R. §232.211 (2006). The movement of trains is restricted until the tests are completed and brake pipe pressure is restored. 49 C.F.R. §232.211 (2006).

Further, the Secretary has issued regulations on grade crossing safety. *See* 49 C.F.R. §§234.105, 234.106, 234.107 (2006). Those regulations control the speed of trains in the event of a failure, partial activation, or false activation of a grade crossing warning system and, in some circumstances, require trains to stop before proceeding through a crossing. 49 C.F.R. §§234.105, 234.106, 234.107 (2006).

These various regulations on train speed, air brake testing, and grade crossing safety work together to regulate and control the movement of trains at grade crossings. They control whether a train may be moved and the speed of a moving train. Taken together, the overall structure of these regulations substantially subsumes the subject matter of the movement of trains at grade crossings. We, therefore, find that the regulations manifest a clear intent to preempt the Village's ordinance on that subject matter.

We note that our decision on this issue is consistent with other federal and state cases considering preemption of similar blocked-crossing laws. *See CSX Transportation, Inc. v. City of Plymouth*, 283 F.3d 812, 817 (6th Cir. 2002); *CSX Transportation, Inc. v. City of*

Mitchell, 105 F. Supp. 2d 949, 952 (S.D. Ind. 1999); *Krentz*, 589 Pa. at 604-05, 910 A.2d at 43-44; *City of Seattle v. Burlington Northern R.R. Co.*, 145 Wash. 2d 661, 673, 41 P.2d 1169, 1175 (2002). Although the blocked-crossing provisions in those cases are each somewhat different from the Village's ordinance, they are similar to the Village's ordinance because they regulate the movement of trains by prohibiting railroad obstructions at grade crossings in specified circumstances. *See CSX Transportation, Inc.*, 283 F.3d at 817; *CSX Transportation, Inc.*, 105 F. Supp. 2d at 951; *Krentz*, 589 Pa. at 600-01, 910 A.2d at 35; *City of Seattle*, 145 Wash. 2d at 667, 41 P.3d at 1172. Those blocked-crossing provisions were found to be preempted by federal regulations on train speed, train movement, or air brake testing. *CSX Transportation, Inc.*, 283 F.3d at 817; *CSX Transportation, Inc.*, 105 F. Supp. 2d at 952-53; *Krentz*, 589 Pa. at 601, 910 A.2d at 36; *City of Seattle*, 145 Wash. 2d at 673, 41 P.3d at 1175. Thus, those cases provide additional persuasive authority for our decision.

While based on different reasoning, other cases have reached the same result in finding blocked-crossing ordinances preempted by the FRSA. *See CSX Transportation, Inc. v. City of Plymouth, Michigan*, 86 F.3d 626 (6th Cir. 1996); *Rotter v. Union Pacific R.R. Co.*, 4 F. Supp. 2d 872 (E.D. Mo. 1998). A municipal ordinance establishing a train speed limit was also held preempted by the FRSA. *See City of Covington v. Chesapeake & Ohio Ry. Co.*, 708 F. Supp. 806 (E.D. Ky. 1989).

We have found one reported case that held a blocked-crossing provision was not preempted by the

FRSA. *See State v. Wheeling & Lake Erie Ry. Co.*, 139 Ohio App. 3d 271, 743 N.E.2d 513 (2000). In that case, the court construed the subject matter of an Ohio blocked-crossing statute as governing the length of time a stopped train may block a highway grade crossing. The court held that the statute was not preempted because there was no federal regulation addressing that specific subject matter. *Wheeling & Lake Erie Ry. Co.*, 139 Ohio App. 3d at 274, 743 N.E.2d at 514. The court also cited *State v. Chessie System R.R.*, No. 2494 (Oh. App. January 3, 1990) (unpublished), as support for its decision. There, the Ohio Appellate Court stated without analysis that "[a]s [the FRSA] expressly allows the states to regulate essentially local safety hazards, there is no explicit or implicit preemption of the subject matter of [the Ohio blocked-crossing statute]." *Chessie System R.R.*, No. 2494 (unpublished). The court went on to address a commerce clause argument by the Railroad that compliance with both the Ohio statute and federal regulations was impossible. The court held there was no evidence in the record of the physical impossibility of dual compliance with both the state and federal regulations. *Chessie System R.R.*, No. 2494 (unpublished).

These cases are distinguishable. First, in this case, we rejected the Village's argument that the ordinance's subject matter is the amount of time a standing train may obstruct a crossing. Rather, we determined that the subject matter of the Village's ordinance is the regulation of the movement of trains at highway grade crossings. Thus, the fact that there is no specific federal regulation governing the amount of time a standing train may block a highway grade crossing is

irrelevant to our analysis. As we have found, the federal regulations as a whole substantially subsume the subject matter of the movement of trains at grade crossings. The analysis in *Chessie System R.R.* is also unpersuasive because it does not employ the statutory standards for addressing a claim of preemption under section 20106 of the FRSA. Rather, the court simply stated the Ohio statute is not preempted by the FRSA and then addressed a commerce clause argument by one of the parties on whether compliance with both the federal regulations and the state statute "is a physical impossibility." *Chessie System R.R.*, No. 2494.

The Village has failed to direct our attention to any other federal or foreign state case holding a blocked-crossing provision was not preempted by the FRSA. The appellate court specifically commented that the Village "provide[d] no authority whatsoever in support of its position that the FRSA [did] not preempt its ordinance." 367 Ill. App. 3d at 430. In this court, the Village relies heavily upon the recent Illinois appellate court decision in *Eagle Marine Industries, Inc. v. Union Pacific R.R. Co.*, 363 Ill. App. 3d 1166 (2006). We accepted that case for review and, today, reverse based upon this opinion.

Having found that the Village's ordinance is preempted, we must next consider whether the saving clause in section 20106 applies to the ordinance. The saving clause provides that:

> "A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order–

(1) is necessary to eliminate or reduce an essentially local safety or security hazard;

(2) is not incompatible with a law, regulation, or order of the United States Government; and

(3) does not unreasonably burden interstate commerce."

49 U.S.C. §20106 (2000 & Supp. 2004).

Here, the Village's ordinance is adopted by reference from an Illinois statute. *See* 625 ILCS 5/18c–7402(1)(b) (West 2004). The parties argue extensively on whether the saving clause is applicable only to state enactments or also encompasses laws issued by a state's political subdivisions. In our view, there is considerable uncertainty as to whether the term "State" is intended to apply only to state enactments or may also include those of a political subdivision. We need not decide that issue, however, because we conclude that even if the ordinance is treated as a state statute, the saving clause does not apply.

Overall, the ordinance fails to satisfy at least two prongs of the saving clause because it is incompatible with the federal regulations on train speed and air brake testing and it burdens interstate commerce. It is, therefore, unnecessary to discuss the first prong of the saving clause on local safety or security hazards. First, viewing train speed, the Village's ordinance prohibits rail carriers from obstructing highway grade crossings for more than 10 minutes. There are exceptions to this prohibition if the train is "continuously moving" or cannot be moved due to circumstances beyond the rail carrier's reasonable

control. The ordinance, therefore, requires a train that stops for a reason within its control to clear the crossing within 10 minutes.

In those circumstances, the train may be required to adjust its speed or length to clear the crossing within 10 minutes to avoid violating the ordinance. *See CSX Transportation, Inc.*, 283 F.3d at 817 ("the amount of time a moving train spends at a grade crossing is mathematically a function of the length of the train and the speed at which the train is traveling"). The appellate court aptly summarized, "[p]ut another way, the regulation here is a regulation of train speed and length, although it applies only when a train stops at a crossing." 367 Ill. App. 3d at 428.

The Supreme Court has interpreted the federal regulations covering train speeds to preclude additional state regulation. *Easterwood*, 507 U.S. at 674, 123 L. Ed. 2d at 402-03, 113 S. Ct. at 1742. The federal regulations apply to all track conditions including those at grade crossings. *Easterwood*, 507 U.S. at 675, 123 L. Ed. 2d at 403, 113 S. Ct. at 1743. Thus, the Village's ordinance regulating train speed at grade crossings is incompatible with federal regulations on that subject. Furthermore, the Supreme Court has held that any state regulation of train length violates the commerce clause. *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 775, 89 L. Ed. 1915, 1928, 65 S. Ct. 1515, 1523 (1945). The ordinance, therefore, also fails to satisfy the third prong of the saving clause because it unreasonably burdens interstate commerce.

Next, considering the federal air brake testing regulations, we find the decision in *Krentz* persuasive. In that case, the Pennsylvania Supreme Court reviewed a blocked-crossing statute that had been interpreted as prohibiting trains from remaining stationary at highway grade crossings for an unreasonable period of time. *Krentz*, 589 Pa. at 601, 910 A.2d at 35. The determination of whether the time period of the obstruction was reasonable was a question for the jury. *Krentz*, 589 Pa. at 601, 910 A.2d at 35. In concluding that the blocked-crossing statute was incompatible with the federal brake system regulations, the court stated, "Simply put, the FRSA brake system regulations direct trains to remain stationary, while [the Pennsylvania statute] instructs them to keep moving." *Krentz*, 589 Pa. at 602-03, 910 A.2d at 36. In reviewing whether the time period of the obstruction was reasonable, the Court stated:

> "The issue of whether the FRSA preempts [the Pennsylvania statute] cannot be relegated to resolution on such a case-by-case basis. If the liability of a railroad for obstructing a given crossing depended upon the facts of each individual case, then the very essence of the FRSA as a comprehensive scheme of uniform railroad safety standards would be thwarted." *Krentz*, 589 Pa. at 602, 910 A.2d at 35-36.

Similar to the Pennsylvania statute, the Village's ordinance requires rail carriers to show that the cause of the obstruction is not within their reasonable control. The Village's ordinance calls for the same type of individualized, case-by-case determinations rejected in *Krentz*. Indeed, the Village asserts that a railroad's

diligent compliance with federal air brake testing regulations "*may* constitute a circumstance beyond the control of the railroad." (Emphasis added.) However, the Village also argues that a mechanical failure is not necessarily a defense if the failure could have been detected by routine and regular inspections. These arguments illustrate the detailed case-by-case review of the railroad's conduct required by the ordinance. The inquiry also strikes at the crux of the federal regulatory scheme of inspections and tests. We agree with the *Krentz* court that this type of individualized, case-by-case review is inconsistent with the FRSA's comprehensive set of uniform safety standards.

In sum, the saving clause does not apply because the ordinance is incompatible with the federal regulations on train speed and air brake testing. We conclude that the Village's ordinance is preempted by the FRSA and is, therefore, unenforceable. Because we have concluded that the ordinance is preempted by the FRSA, we need not consider the Village's argument that the trial court did not err in applying the ordinance to the facts of this case. Accordingly, we affirm the appellate court's conclusion that the Village's ordinance is preempted by the FRSA.

III. CONCLUSION

For the foregoing reasons, the judgment of the appellate court is affirmed.

Affirmed.

APPENDIX B

IN THE APPELLATE COURT OF ILLINOIS SECOND DISTRICT

No. 2--05--0492

[Filed September 6, 2006]

THE VILLAGE OF MUNDELEIN,	)
	)
Plaintiff-Appellee,	)
	)
v.	)
	)
WISCONSIN CENTRAL RAILROAD,	)
	)
Defendant-Appellant.	)
	)

Appeal from the Circuit Court of Lake County
No. 05--OV--276
Honorable Raymond D. Collins, Judge, Presiding.

JUSTICE HUTCHINSON delivered the opinion of the court:

Following a bench trial, defendant, Wisconsin Central Railroad, was found guilty of violating an ordinance enacted by plaintiff, the Village of Mundelein (the Village), prohibiting the obstruction of

a highway at a railroad grade crossing. The trial court fined defendant $14,000 plus costs. Defendant timely appeals, contending that the Village's enforcement and application of its ordinance is preempted by the Federal Railroad Safety Authorization Act of 1994 (the FRSA) (49 U.S.C. § 20101 *et seq.* (2000 & Supp. II 2002)). For the reasons that follow, we reverse the trial court's judgment and vacate the fine.

Section 10.20.010 of the Village's municipal code adopts by reference the provisions of the Illinois Vehicle Code (the Vehicle Code) (625 ILCS 5/1--100 *et seq.* (West 2004)) as its vehicle code. *See* Mundelein Municipal Code §10.20.010 (1989). As it pertains here, the obstruction of a highway at a grade crossing by a train is addressed in chapter 18c of the Vehicle Code, titled the Illinois Commercial Transportation Law (the Transportation Law) (625 ILCS 5/18c--1101 *et seq.* (West 2004)). Section 18c--7402(1)(b) of the Transportation Law (625 ILCS 5/18c--7402(1)(b) (West 2004)), titled "Safety Requirements for Railroad Operations," provides in pertinent part as follows:

> "It is unlawful for a rail carrier to permit any train, railroad car or engine to obstruct public travel at a railroad-highway grade crossing for a period in excess of 10 minutes, except where such train or railroad car is continuously moving or cannot be moved by reason of circumstances over which the rail carrier has no reasonable control.
>
> *** Under no circumstances will a moving train be stopped for the purposes of issuing a

citation related to this Section." 625 ILCS 5/18c--7402(1)(b) (West 2004).

The record reflects that on January 17, 2005, defendant was issued a citation for violating the Village's ordinance by blocking the highway grade crossing at Hawley Street in the Village for 157 minutes. On March 31, 2005, defendant filed an offer of proof in support of its argument that it was not guilty. In its offer of proof, defendant argued that it did not violate the ordinance, because the train was stopped at the crossing for reasons beyond its reasonable control. Defendant also argued that enforcement of the Village's ordinance was preempted by the ICC Termination Act of 1995 (the ICCTA) (49 U.S.C. §10101 *et seq.* (2000)) and by the FRSA (49 U.S.C. §20101 *et seq.* (2000 & Supp. II 2002)). On April 6, 2005, the Village filed its response to defendant's offer of proof, and on April 22, 2005, the trial court conducted a bench trial.

The parties stipulated that defendant's train blocked the crossing for the duration of time indicated in the citation. Defendant proceeded with the testimony of Bernard Kareka, the conductor of defendant's train. Kareka's testimony reflected that, on January 17, 2005, he was operating defendant's train through the Village. The train consisted of 3 locomotive engines and 119 cars and had been stopped in Lake Villa for approximately three to four hours prior to Kareka and an engineer's arrival. The crew that was to bring the train through the Village consisted of Kareka and the engineer. The crew had boarded the train earlier in the morning at Lake Villa, where the train had been secured by the previous

crew. Kareka testified that, when he boarded the train at Lake Villa, the previous crew had left a note on the train, indicating that they had problems with the air brakes on the train. Kareka testified that the previous conductor had also fixed a couple of air leaks on the train and changed the gaskets between the air hoses.

Kareka's testimony further reflected that he looked over the first head cars of the train to locate hand brakes, and the engineer looked over the locomotives. The crew then conducted a job briefing, reviewed paperwork, and made sure any cars containing hazardous material were properly placed in the train. The crew also conducted an air brake test called a "set and release test" and verified that the air pressure on the rear of the train was within 15 pounds of the pressure on the front of the train. Kareka explained that federal regulations require verification that brakes are in operating order when an engineer boards a locomotive. He further explained that, as a crew taking over a train already en route, they were not required to perform any tests beyond what they did nor were they required to conduct an inspection of the entire length of the train.

The train departed Lake Villa and headed south toward the Village. As the train was approaching the Village, the crew received an indication from a "hot box" detector that there was dragging equipment on the rear car of the train. In accordance with defendant's operating procedures, the engineer began to slow the train, intending to stop the train and investigate. At that point, though, the train experienced a sudden loss of air pressure, which caused the emergency brakes to apply on each car on

the train. The crew tried to restore air pressure, but the end-of-train indicator showed that the air brake system pressure on the rear of the train would not come up.

Kareka departed the lead locomotive and began walking the length of the train to inspect the train. During his inspection, Kareka discovered that an angle cock was out of position on a car approximately five or six cars forward from the 76th car. He explained that an angle cock is a valve that regulates the flow of air through the train's brake line in each car. Kareka opined that the problem with the angle cock could have been caused by sabotage, by debris that may have knocked the valve out of position while the train was in motion, or by vibration. Kareka further opined that, when the engineer applied a minimum amount of brake pressure when the train began to pass through the Village, it was possible that the brakes applied in the front portion of the train but, due to the angle cock being out of position, not in the rear portion of the train. The effect would have been that the rear portion ran into the front portion. Kareka straightened the angle cock on the car.

When Kareka reached the 76th car of the train, he discovered that a "drawbar," a connecting bar between train cars, had failed and fallen off on the rear end of the 76th car. Kareka testified that a drawbar breaking would cause an emergency brake application. He also noticed that, when the drawbar broke off, it fell under the next couple of cars in the train, damaging the hose on the following car. Kareka testified that the train had broken into two sections. Kareka testified that the crew had no reason to think that the air pressure

would not be working once the air test performed that morning in Lake Villa had been successful.

Upon assessing the damage, the crew situated the rear of the train just north of Dunbar Road in the Village and brought the rest of the train, including the car with the failed drawbar, south to set out and leave the defective car on a spur track. They then reversed the train, and the engineer shoved it back to reconnect with the rear part still sitting north of Dunbar Road. During this time, no crossings were obstructed.

Next, the crew began the process of tying the train back together and conducting required brake tests so that the train could proceed to Schiller Park. With the train reconnected, the crew checked the brake system air pressure, but the brake pressure on the rear of the train was not restored to an acceptable level required for departure. Again, Kareka inspected the train, checking for leaks in the air brake system. A crew on another train on an adjoining track assisted in inspecting the train and looking for leaks. During this inspection, the train was blocking Hawley Street in the Village. The crew ultimately cut the train, or broke it apart, twice to allow passengers on and off a Metra train at the Village's train station. Upon cutting the train, the forward portion had proper air pressure. When the train was cut the second time, the railroad dispatcher directed the crew to take the forward portion to Schiller Park. Another train came by, and its crew tied up and took the remaining portion to Schiller Park.

Following the arguments of the parties, the trial court found that the enforcement of the Village's

ordinance was not preempted by federal law and regulations. The trial court further found that the circumstances resulting in the blockage of the grade crossing were within defendant's reasonable control. The trial court found that, if the crew had conducted a visual inspection of the train prior to leaving Lake Villa, they may have discovered the angle cock being out of position. The trial court also noted that the train had been idle for several hours before the new crew took it over in Lake Villa, that there was a report of issues with the air brakes, and that no visual inspection was conducted. The trial court believed that such an inspection could have identified the problem, which the trial court concluded was a circumstance within defendant's control. In finding defendant guilty of violating the ordinance, the trial court fined defendant $14,000 plus costs. Defendant timely appeals.

The contentions that defendant raises on appeal are (1) that enforcement of the Village's ordinance is preempted by the FRSA (49 U.S.C. §20101 *et seq.* (2000 & Supp. II 2002)), and (2) that the trial court, in finding that defendant should have conducted additional investigation of the train prior to its departure from Lake Villa, imposed additional duties of inspection and investigation on defendant in an area of law that is preempted by the FRSA. Defendant argues that court decisions and the express provisions of the FRSA establish the FRSA's preemptive effect on state statutes and local ordinances. Defendant concludes that it was entitled to judgment in its favor because the Village's ordinance was unenforceable.

Federal preemption of municipal ordinances is governed by the same standards that apply to federal preemption of state law. *See Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 605, 115 L. Ed. 2d 532, 543, 111 S. Ct. 2476, 2482 (1991). Pursuant to the supremacy clause of the United States Constitution (U.S. Const., art. VI, cl. 2), Congress has the authority to preempt state law. *English v. General Electric Co.*, 496 U.S. 72, 78-79, 110 L. Ed. 2d 65, 74-75, 110 S. Ct. 2270, 2275 (1990). Three ways exist in which federal law may preempt state law: (1) when the language of the federal statute expressly preempts state law; (2) when the scope of the statute indicates that Congress intended federal law to occupy the field exclusively; or (3) when state law is in actual conflict with federal law. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64, 154 L. Ed. 2d 466, 478-79, 123 S. Ct. 518, 527 (2002). In determining whether Congress has preempted state law, this court examines congressional intent. *Van Der Molen v. Washington Mutual Finance, Inc.*, 359 Ill. App. 3d 813, 818 (2005). This examination begins with the assumption that Congress did not intend to displace state law. *Van Der Molen*, 359 Ill. App. 3d at 818, citing *Maryland v. Louisiana*, 451 U.S. 725, 746, 68 L. Ed. 2d 576, 595, 101 S. Ct. 2114, 2129 (1981). When preemption is invoked to prevent a state or municipality from wielding its traditional police powers, congressional intent to displace that authority must be "clear and manifest." *See Mortier*, 501 U.S. at 605, 115 L. Ed. 2d at 543, 111 S. Ct. at 2482. Whether a federal enactment preempts a state statute or, in this case, a municipal ordinance that adopts a state statute, is a question of law, subject to *de novo* review. *See Van Der Molen*, 359 Ill. App. 3d at 818.

Although defendant presented an argument to the trial court that enforcement of the Village's ordinance is preempted by the ICCTA, it did not pursue the argument at the appellate level. We note that at least one federal appeals court has construed the ICCTA and concluded that it expressly preempted state and local laws. *See Friberg v. Kansas City Southern Ry. Co.*, 267 F.3d 439, 443-44 (5th Cir. 2001) (explaining that regulating the time a train may occupy a rail crossing impacts the way a railroad operates its trains regarding such areas as train speed, length, and scheduling). We must also note, though, that a reviewing court in this state recently determined that the ICCTA did not preempt the state statute on which the Village's ordinance was based. *See Eagle Marine Industries, Inc. v. Union Pacific R.R. Co.*, 363 Ill. App. 3d 1166, 1180-82 (5th Dist. 2006). In any event, because defendant did not present an argument to this court based on the *Friberg* analysis or holding, we decline to consider whether the ICCTA preempts the enforcement of the Village's ordinance. *See Dineen v. City of Chicago*, 125 Ill. 2d 248, 266 (1988). Accordingly, we will proceed with our consideration of whether the FRSA preempts the Village's ordinance.

Enacted in 1970, the FRSA contemplated a comprehensive and uniform set of safety regulations in all areas of railroad operations. *Chicago Transit Authority v. Flohr*, 570 F.2d 1305, 1308-09 (7th Cir. 1977). The FRSA's purpose is to "promote safety in every area of railroad operations and [to] reduce railroad-related accidents and incidents." 49 U.S.C. §20101 (2000); *CSX Transportation, Inc. v. Easterwood*, 507 U.S. 658, 661, 123 L. Ed. 2d 387, 395, 113 S. Ct. 1732, 1736 (1993). The FRSA specifically

directs the Secretary of Transportation to study and develop solutions to safety problems posed by grade crossings. 49 U.S.C. §20102 (2000); *Easterwood*, 507 U.S. at 661-62, 123 L. Ed. 2d at 395, 113 S. Ct. at 1736. The FRSA authorizes the Secretary of Transportation to promulgate rules, regulations, and standards for every area of railroad safety. 49 U.S.C. §20103(a) (Supp. II 2002); *Easterwood*, 507 U.S. at 662, 123 L. Ed. 2d at 395, 113 S. Ct. at 1736.

Section 20106 of the FRSA governs the preemptive effect of these regulations, containing express savings and preemption clauses, and provides as follows:

> "Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order--
>
> (1) is necessary to eliminate or reduce an essentially local safety or security hazard;

(2) is not incompatible with a law, regulation, or order of the United States Government; and

(3) does not unreasonably burden interstate commerce." 49 U.S.C. §20106 (Supp. II 2002).

Therefore, in the present case, we must first consider whether the Village's ordinance is "related to" railroad safety, *i.e.*, whether section 20106 of the FRSA applies. If the Village's ordinance does relate to railroad safety, then we must consider whether the Secretary of Transportation or the Secretary of Homeland Security has issued orders or regulations "covering" the same subject matter as the Village's ordinance pertaining to the operation of trains at grade crossings, *i.e.*, whether there is preemption under section 20106 of the FRSA. If either of these federal agencies has issued orders or regulations "covering" the subject matter of the Village's ordinance, then we must next consider whether the ordinance meets the three requirements under section 20106 so as to be exempted from preemption.

The Village generally asserts that the ordinance does not relate to railroad safety but serves only to "facilitate the orderly flow of vehicular traffic throughout the Village." In *Easterwood*, the Court noted that the phrase "relating to" railroad safety is given a broad interpretation. *Easterwood*, 507 U.S. at 664, 123 L. Ed. 2d at 397, 113 S. Ct. at 1738, citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-84, 119 L. Ed. 2d 157, 167-68, 112 S. Ct. 2031, 2037 (1992). A federal statute that expressly calls for

preemption of matters "relating to" the subject matter of that statute preempts "actions having a connection with or reference to" that subject matter. *Morales*, 504 U.S. at 384, 119 L. Ed. 2d at 167, 112 S. Ct. at 2037. Therefore, in determining whether the Village's ordinance "relates to" railroad safety, we must determine whether there is the requisite "connection with or reference to" railroad safety. *See Morales*, 504 U.S. at 384, 119 L. Ed. 2d at 167, 112 S. Ct. at 2037; *see also CSX Transportation, Inc. v. City of Plymouth, Michigan*, 86 F.3d 626, 629 (1996).

In the present case, the Village adopted the provisions of the Illinois Vehicle Code as its vehicle code. *See* Mundelein Municipal Code §10.20.010 (1989). The ordinance at issue here pertaining to the obstruction of a highway by a train at a grade crossing is codified in the section of the Transportation Law that deals with regulations of railroads, that is, section 18c--7402(1)(b) of the Transportation Law, titled "Safety Requirements for Railroad Operations." *See* 625 ILCS 5/18c--7402(1)(b) (West 2004). Therefore, on its face, the title of the Village's ordinance clearly makes "reference to" railroad safety. *See Morales*, 504 U.S. at 384, 119 L. Ed. 2d at 167, 112 S. Ct. at 2037. The plain language of the ordinance makes clear that the ordinance is directed at rail carriers and applies only to trains, railroad cars, and engines and not to any other vehicle or entity that may cause an obstruction at a crossing--it applies only to railroads. Because the plain language of the Village's ordinance establishes the requisite "connection with or reference to" railroad safety (*see Morales*, 504 U.S. at 384, 119 L. Ed. 2d at 167, 112 S. Ct. at 2037), the provisions of the

Village's ordinance fall within the scope of section 20106 of the FRSA.

We next consider whether the Secretary of Transportation or the Secretary of Homeland Security has issued orders or regulations "covering" the same subject matter as the Village's ordinance pertaining to the operation of trains at grade crossings, *i.e.*, whether there is preemption under section 20106 of the FRSA. In the present case, defendant, as the party seeking preemption, must establish more than that the federal orders or regulations "touch upon" or "relate to" railroad safety. *See Easterwood*, 507 U.S. at 664, 123 L. Ed. 2d at 397, 113 S. Ct. at 1738. Section 20106 of the FRSA provides that "[l]aws, regulations, and orders related to railroad safety shall be nationally uniform to the extent possible." 49 U.S.C. §20106 (Supp. II 2002). Therefore, in determining whether the provisions of the FRSA preempt the Village's ordinance, we must consider whether federal orders or regulations have been issued "covering" the subject matter, that is, "substantially subsum[ing] the subject matter of the relevant state law." *Easterwood*, 507 U.S. at 664, 123 L. Ed. 2d at 397, 113 S. Ct. at 1738. It is not necessary for the federal regulation to be identical for preemption to apply. *Easterwood*, 507 U.S. at 675, 123 L. Ed. 2d at 403-04, 113 S. Ct. at 1743.

In *Easterwood*, 507 U.S. 658, 123 L. Ed. 2d 387, 113 S. Ct. 1732, the United States Supreme Court reviewed whether the FRSA preempted certain claims for negligence. The plaintiff brought a wrongful-death action against a railroad company, following the death of her spouse. The plaintiff alleged, *inter alia*, that the railroad company was negligent under Georgia law for

failing to maintain adequate warning devices at the crossing and for operating its train at an excessive speed. The Supreme Court held that, under the FRSA, federal regulations adopted by the Secretary of Transportation preempted the plaintiff's negligence action only insofar as it asserted that the railroad company's train was traveling at an excessive speed. *Easterwood*, 507 U.S. at 675, 123 L. Ed. 2d at 404, 113 S. Ct. at 1743. In so holding, the Supreme Court explained that, although the federal regulations addressed only the maximum speeds at which trains were permitted to travel given the nature of the tracks on which they operate, the overall structure of the Secretary's regulations demonstrated that the speed limits were adopted with safety concerns in mind and should be understood as "covering the subject matter" in question. *Easterwood*, 507 U.S. at 674-75, 123 L. Ed. 2d at 402-03, 113 S. Ct. at 1742-43. Therefore, even though no particular regulation addressed state regulation of train speed, the *Easterwood* Court found preemption through a series of related regulations. *Easterwood*, 507 U.S. at 675, 123 L. Ed. 2d at 403-04, 113 S. Ct. at 1743.

In the present case, defendant argues that the FRSA preempts enforcement of the Village's ordinance and that the savings clause providing exceptions to preemption in section 20106 does not apply. Defendant asserts that the Secretary of Transportation has issued a number of regulations that substantially subsume the subject matter that the Village's ordinance covers and lists the following: (1) regulations concerning when and how a railroad may transport defective rail cars (49 C.F.R. §232.15 (2005)); (2) regulations directing that an emergency brake application shall

occur when there is a rupture in the brake system (49 C.F.R. §232.103 (2005)); (3) regulations concerning air brake testing after a rupture in brake pipe continuity (49 C.F.R. §232.211 (2005)); and (4) regulations concerning what tests and inspections are required when a new train crew takes over a train that is already in transit between terminals (49 C.F.R. §§232.203, 232.205, 232.215 (2005)). Defendant concludes that enforcement of the Village's ordinance is preempted pursuant to section 20106 of the FRSA because these regulations substantially subsume the subject matter.

In support of its argument, defendant cites *CSX Transportation, Inc. v. City of Mitchell, Indiana*, 105 F. Supp. 2d 949 (S.D. Ind. 1999), and *CSX Transportation, Inc. v. City of Plymouth, Michigan*, 283 F.3d 812 (6th Cir. 2002). In *Mitchell*, the railroad company brought an action against the municipality seeking declaratory and injunctive relief to prevent the municipality's enforcement of a state statute prohibiting trains from occupying railroad crossings for more than 10 minutes. The Indiana statute provided:

> "It shall be unlawful for a railroad corporation to permit any train, railroad car or engine to obstruct public travel at a railroad-highway grade crossing for a period in excess of ten (10) minutes, except where such train, railroad car or engine cannot be moved by reason of circumstances over which the railroad corporation has no control." *Mitchell*, 105 F. Supp. 2d at 951, citing Ind. Code §8-6-7.5-1 (____).

The district court granted summary judgment in favor of the railroad company, holding that enforcement of the statute was preempted by the FRSA. *Mitchell*, 105 F. Supp. 2d at 952-53. The district court found that the city's enforcement of the statute frustrated the railroad company's compliance with federal regulations governing train speed, train length, and trains in motion, as well as air brake testing and the use of flagmen. *Mitchell*, 105 F. Supp. 2d at 952.

In *Plymouth*, the Sixth Circuit affirmed a district court ruling that Michigan's anti-blocking statute was preempted by the FRSA and that it also violated the commerce clause of the United States Constitution (U.S. Const., art. I, §8, cl. 3). *Plymouth*, 283 F.3d at 814. The Michigan statute at issue provided:

> "A railroad shall not permit a train to obstruct vehicular traffic on a public street or highway for longer than 5 minutes at any 1 time, except the obstruction shall not be considered a violation under the following circumstances:
>
> (a) If the train is continuously moving in the same direction at not less than 10 miles per hour for not longer than 7 minutes.
>
> (b) If the railroad can show that the incident occurred as a result of a verifiable accident, mechanical failure, or unsafe condition." *Plymouth*, 283 F.3d at 817, citing Mich. Comp. Laws Ann. §462.391 (West ____).

The district court had determined that, by limiting the amount of time a moving train could block a grade crossing, the Michigan statute was effectively regulating a train's speed, length, and performance of air brake testing. *Plymouth*, 283 F.3d at 816. On appeal, the Michigan Attorney General contended that the subject matter of the statute was "the time that trains may block highway traffic." *Plymouth*, 283 F.3d at 817. The court of appeals was unpersuaded by the Attorney General's position, explaining that "the amount of time a moving train spends at a grade crossing is mathematically a function of the length of the train and the speed at which the train is traveling." *Plymouth*, 283 F.3d at 817. The court of appeals concluded that the Michigan statute would require the railroad company to modify either the speed at which its trains travel or their length, and would also restrict the railroad company's performance of federally mandated air brake tests. *Plymouth*, 283 F.3d at 817. The court of appeals determined that, to the extent that the Michigan statute sought to modify the length of trains, the United States Supreme Court had already determined that that type of regulation violated the commerce clause. *Plymouth*, 283 F.3d at 817. In affirming the district court's ruling, the court of appeals also noted that "numerous" federal regulations covered the speed at which trains may travel and the stops that trains must make to test their air brakes, and thus, the federal regulations "'substantially subsume the subject matter of the relevant state law.'" *Plymouth*, 283 F. 3d at 817, quoting *Easterwood*, 507 U.S. at 664, 123 L. Ed. 2d at 397, 113 S. Ct. at 1738.

In the present case, and as stated above, the Village's ordinance provides as follows:

> "It is unlawful for a rail carrier to permit any train, railroad car or engine to obstruct public travel at a railroad-highway grade crossing for a period in excess of 10 minutes, except where such train or railroad car is continuously moving or cannot be moved by reason of circumstances over which the rail carrier has no reasonable control.
>
> *** Under no circumstances will a moving train be stopped for the purposes of issuing a citation related to this Section." Mundelein Municipal Code §10.20.010 (1989), adopting 625 ILCS 5/18c--7402(1)(b) (West 2004).

The Village's ordinance is similar to the Michigan and Indiana statutes to the extent that the subject matter of each pertains to the time that trains may obstruct a grade crossing, thereby blocking vehicular traffic. Also similar to the Michigan and Indiana statutes is the provided exception to the violation, under which the rail carrier bears the burden to establish that the violation occurred by reason of circumstances beyond its reasonable control, *i.e.*, a verifiable accident, mechanical failure, or an unsafe condition. Both the Sixth Circuit Court of Appeals and the District Court of the Southern District of Indiana have presented reasonable and logical analyses in determining that federal regulations have been promulgated to cover, *inter alia*, train speed and length such that the FRSA preempts any other entity's enactment regulating, even indirectly, the subject matter of speed, train

length, and the performance of air brake tests. *See Plymouth*, 283 F.3d at 816-17; *Mitchell*, 105 F. Supp. 2d at 952-53.

Despite the similarities, the Village's ordinance is different from the Indiana statute in that the Village's ordinance restricts a train from obstructing the grade crossing for more than 10 minutes if the train stops in the crossing. Therefore, the question is whether that difference saves the ordinance from preemption. Our analysis leads us to the conclusion that it does not. We note that the Secretary of Transportation has promulgated regulations setting maximum train speeds for different classes of track. *See* 49 C.F.R. §213.9 (1998); *Waymire v. Norfolk & Western Ry. Co.*, 218 F.3d 773, 776 (7th Cir. 2000). As we discussed above, in *Easterwood*, the Supreme Court held that the FRSA preempted a state claim for negligence based on excessive speed. The *Easterwood* Court recognized that the federal regulations addressed only maximum speeds at which trains were permitted to travel, but noted that "the speed limits must be read as not only establishing a ceiling, but also precluding additional state regulation." *Easterwood*, 507 U.S. at 674, 123 L. Ed. 2d at 402-03, 113 S. Ct. at 1742. The *Easterwood* Court stated that the regulations "should be understood as covering the subject matter of train speed with respect to the track conditions, including the conditions posed by grade crossings." *Easterwood*, 507 U.S. at 675, 123 L. Ed. 2d at 403, 113 S. Ct. at 1743.

In the present case, the Village's ordinance applies to all trains traveling through the Village. The Village's ordinance imposes a condition that is related

to a train's speed and length by restricting the train from obstructing a grade crossing for more than 10 minutes if the train stops in the crossing. Enforcement of the Village's ordinance reveals how the ordinance regulates train speed and length. For example, if a train takes more than 10 minutes to pass a grade crossing, then the train must be in continual motion or else it would be in violation of the Village's ordinance. Essentially, the Village's ordinance requires a train to do one of two things when passing a crossing: (1) do not stop, or (2) stop but clear quickly. The question is whether the Village can require both of those things; the answer is that it can require neither. To achieve compliance, the Village's ordinance compels railroad carriers to either adjust the length of their trains, *e.g.*, by having a higher volume of shorter trains, or adjust the speed at which the trains are traveling. Put another way, the regulation here is a regulation of train speed and length, although it applies only when a train stops at a crossing. Because the Village's ordinance regulates train speed and length, and any attempt to regulate train speed and length is preempted by the FRSA, the Village's ordinance is preempted by the FRSA. *See Plymouth*, 283 F.3d at 816-17; *Mitchell*, 105 F. Supp. 2d at 952-53.

Moreover, the Village's ordinance facially regulates train speed by including an exception that exempts a train from a violation "where such train or railroad car is continuously moving." Mundelein Municipal Code §10.20.010 (1989), adopting 625 ILCS 5/18c--7402(1)(b) (West 2004). By requiring a train to either clear a grade crossing within 10 minutes or be in continuous movement, the ordinance regulates the train's speed and its length. It is uncontroverted that "numerous"

federal regulations cover the subject matter of speed at which trains may travel, based on the class of track. *See* 49 C.F.R. §§213.9 (reflecting that a freight train may not exceed 10 miles per hour on a Class 1 track, whereas a passenger train may travel as fast as 90 miles per hour on a Class 5 track); 213.307 (reflecting allowable speeds up to 200 miles per hour); 213.57 (reflecting operating speeds for negotiating a curve) (2005); *Plymouth*, 283 F.3d at 817. Based on our review of the Village's ordinance and the relevant authorities, we conclude that the Village's ordinance is preempted by the FRSA.

The Supreme Court has held that state regulation of train length also violates the commerce clause. *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 89 L. Ed. 1915, 65 S. Ct. 1515 (1945). By limiting the amount of time a train may block a grade crossing, the Village's ordinance also restricts the rail carrier's performance of federally mandated air brake tests. *See Plymouth*, 283 F.3d at 817. Grade crossing safety is another area covered by federal regulations. *See* 49 C.F.R. §§234.105, 234.106, 234.107 (2005). Because the overall structure of the Secretary's regulations demonstrates that speed limits and grade crossing regulations were adopted with safety concerns in mind, the federal regulations "substantially subsume the subject matter of the relevant state law." *Easterwood*, 507 U.S. at 664, 123 L. Ed. 2d at 397, 113 S. Ct. at 1738. To the extent that the Village's ordinance regulates train speed and length and the performance of federally mandated air brake tests, and implicates grade crossing safety concerns, it is preempted by the FRSA, because the federal regulations "cover the subject matter." *See Easterwood*,

507 U.S. at 675, 123 L. Ed. 2d at 403, 113 S. Ct. at 1743; *Plymouth*, 283 F.3d at 817; *Friberg*, 267 F.3d at 443; *Mitchell*, 105 F. Supp. 2d at 952. But see *Eagle Marine Industries, Inc.*, 363 Ill. App. 3d at 1183 (holding that section 18c--7402(a)(b) of the Vehicle Code was not preempted by the FRSA).

Other courts have concluded likewise in similar circumstances. *See Rotter v. Union Pacific R.R. Co.*, 4 F. Supp. 2d 872, 874 (E.D. Mo. 1998) (holding that the FRSA preempted a municipal ordinance prohibiting a railroad from blocking a crossing for more than five minutes); *City of Seattle v. Burlington Northern R.R. Co.*, 41 P.3d 1169, 1174 (Wash. 2002) (holding that the FRSA preempted city ordinances regulating street blockages for periods over four minutes because they affected "the speed at which trains travel, train length, and trains in physical motion," areas regulated by the FRSA). Our determination that the Village's ordinance is preempted by the FRSA because it attempts to regulate train speed, train length, and grade crossing safety obviates the need for a discussion of whether the ordinance regulates federal air brake testing or the use of flagmen.

In responding to defendant's arguments and authority in support of preemption by the FRSA, the Village states, without any citation to supporting authority:

> "The Mundelein ordinance does not attempt to regulate train speed, train length, switching, or any other operational aspect, of the defendant's trains. The Mundelein ordinance only attempts to keep the Village roads clear of

> obstructions which affect the ability of emergency vehicles to respond to emergency calls and facilitate the orderly flow of vehicular traffic throughout the Village."

In asserting that the ordinance is not preempted by the FRSA, the Village presents little more than the foregoing conclusory statements of the ordinance's purported purpose. The Village fails to distinguish defendant's authority in any meaningful manner and wholly fails to address the *Plymouth* and *Mitchell* courts' analyses. Further, the Village provides no authority whatsoever in support of its position that the FRSA does not preempt its ordinance. Despite a presumption against federal preemption (*Van Der Molen*, 359 Ill. App. 3d at 818), without more, we are unpersuaded by the Village's response to defendant's preemption argument.

Having determined that the federal regulations cover the subject matter of the Village's ordinance and that the ordinance is, therefore, preempted by the FRSA, we next consider whether the ordinance can survive under the savings clause of section 20106 of the FRSA. Again, the savings clause provides:

> "A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order--
>
> (1) is necessary to eliminate or reduce an essentially local safety or security hazard;

(2) is not incompatible with a law, regulation, or order of the United States Government; and

(3) does not unreasonably burden interstate commerce." 49 U.S.C. §20106 (Supp. II 2002).

Defendant argues that the savings clause does not apply, for two reasons. First, defendant argues that the savings clause does not apply to municipal ordinances but only to state laws or actions. *See Plymouth*, 86 F.3d at 628-29 (finding that the FRSA's savings clause does not apply to municipal ordinances). Second, defendant argues that the Village's ordinance fails to meet the requirements of the savings clause in that the plain language of the ordinance fails to state that it is addressing a uniquely local safety hazard; the ordinance is incompatible with the federal regulations and procedures in response to a casualty situation; and enforcing the ordinance would burden interstate commerce by frustrating the FRSA's goals of uniform national safety standards.

We first consider whether the savings clause encompasses municipal ordinances. Our review of the clause is guided by the well-established principles of statutory construction. The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent. *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006), citing *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 279 (2003). The most reliable indication of that intent is the statutory language itself. *Southern Illinoisan*, 218 Ill. 2d at 415, citing *In re Madison H.*, 215 Ill. 2d 364, 372 (2005). We must afford the

language its plain, ordinary, popularly understood meaning. *Cryns*, 203 Ill. 2d at 279. When the language is unambiguous, the statute must be applied as written, without resorting to other aids of construction. *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1, 10 (2001).

In the present case, the plain language of section 20106 provides that these exceptions apply only to a "State" that "adopt[s] or continue[s] in force an additional or more stringent law, regulation, or order related to railroad safety or security." 49 U.S.C. §20106 (Supp. II 2002). Because the Village is not a "State," the Village's ordinance is not within the FRSA's savings clause exceptions. *See Plymouth*, 86 F.3d at 628. Other courts have held similarly that the savings clause does not apply to local governments or cover regulation by municipal ordinances. *See Donelon v. New Orleans Terminal Co.*, 474 F.2d 1108 (5th Cir. 1973); *CSX Transportation, Inc. v. City of Thorsby*, 741 F. Supp. 889, 891 (M.D. Ala. 1990); *City of Covington v. Chesapeake & Ohio Ry. Co.*, 708 F. Supp. 806, 808-09 (E.D. Ky. 1989); *CSX Transportation, Inc. v. City of Tullahoma*, 705 F. Supp. 385, 387-88 (E.D. Tenn. 1988).

We believe that the text and structure of the savings clause of section 20106 of the FRSA leaves no doubt that a municipality does not constitute a "State" and that the exception does not encompass municipal ordinances. *See Michigan Southern R.R. Co. v. City of Kendallville*, 251 F.3d 1152 (7th Cir. 2001). Because the Village is not a "State," the Village's ordinance does not fall within the FRSA's savings clause. Accordingly, we need not address the remaining three

requirements listed in the savings clause, because these exceptions apply only to states. *See Eagle Marine Industries, Inc.*, 363 Ill. App. 3d 1166 (considering the exceptions in reviewing section 18c--7402(1)(b) of the Vehicle Code).

The supremacy clause of the United States Constitution establishes that, when federal law conflicts with state or local law, the federal law must control. U.S. Const., art. VI, cl. 2; *see also Busch v. Graphic Color Corp.*, 169 Ill. 2d 325, 334 (1996). For the reasons discussed above, we find that the Village's ordinance is preempted by the FRSA and is unenforceable.

Because the Village's ordinance is preempted by the FRSA and is unenforceable, a discussion of whether the trial court correctly applied the ordinance when it found defendant guilty of violating the ordinance is not warranted. *See National Commercial Banking Corp. of Australia, Ltd. v. Harris*, 125 Ill. 2d 448, 454-55 (1988) (declining to address other issues presented by the parties on appeal because of its decision based on preemption).

For the foregoing reasons, we reverse the judgment of the circuit court of Lake County and vacate the fine.

Reversed; fine vacated.

O'MALLEY and GILLERAN JOHNSON, JJ., concur.

APPENDIX C

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

IN THE CIRCUIT COURT FOR THE 19TH JUDICIAL CIRCUIT LAKE COUNTY, ILLINOIS

No. 05 OV 276; 05 OV 277; 05 OV 278

[Dated April 22, 2005]

THE VILLAGE OF MUNDELEIN,)
)
Plaintiff,)
)
v.)
)
WISCONSIN CENTRAL RAILROAD,)
)
Defendant.)

REPORT OF PROCEEDINGS
April 22, 2005
1:30 P.M.

REPORT OF PROCEEDINGS had and testimony taken at the trial of the above-entitled cause, taken before the Honorable RAYMOND D. COLLINS, Judge

of said Court, taken at the Lake County Courthouse, 105 East Route 83, Mundelein, Illinois.

* *

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MR. BARRON: Thank you, Judge.

(Whereupon, a recess was taken.)

THE COURT: All right. I have had an opportunity to listen to the testimony that was presented live in court. I've had an opportunity to observe the witness while he was testifying, for his demeanor.

I've also reviewed the exhibit that was presented -- excuse me -- admitted into evidence. I've reviewed the offer of proof by the defense, which was given for all the cases that we have pending -- it's a similar offer of proof on all of them -- and the memorandum, with argument.

I've had an opportunity to review the response of the Village to that memorandum and offer of proof and an opportunity to review the Ordinance of the Village of Mundelein, which, in part, reads:

"It is unlawful for a rail carrier to permit any train, railroad car or engine to obstruct public travel at a railway grade crossing for a period in excess of 10 minutes, except where such train or rail car is

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continuously moving or cannot be moved by reason of circumstances over which the rail carrier has no reasonable control."

That is part of the Ordinance that is cited in the Village of Mundelein.

I look at all these cases on their own set of facts. I think that they're all different. I think the preemptions that are involved are all different, based on facts.

And this Court believes that the circumstances that revolve around this case were within the control or reasonable control of the rail carrier. The facts, as I heard them, were:

When the conductor took over the train in Lake Villa, there was a report of bad air. There was no testimony, pursuant to my notes, that there was any report given as to what was done about that situation or whether anything was done for repairs on that situation, only that there was a report given on bad air.

There was no visual inspection done of the train at that point. I asked the question at

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the end or close of the evidence as to whether that train could have been operated under air pressure regulations with that angle cock out or not in proper position. And the response was yes. In my mind, that

believes -- I believe that there is a situation where, if that visual inspection were done, there may have not been a problem; that this may have been a result of that angle cock not being in position, causing the subsequent repairs having to be done and the train breaking apart.

The train sat for three to four hours idle prior to the conductor taking the train over in Lake Villa. Again, based on the testimony of the conductor, we had weather conditions. It was in the teens. We've had testimony that temperature could effect the air pressure in the train. And there was no visual inspection done to the train, even though the weather was in the teens and there was a report given that there was bad air.

Again, prior to taking off from the Lake Villa, going southbound, toward Mundelein, there was no visual inspection done. Again, the Court

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believes that that may have -- was a circumstance reasonably within their control, that they could have possibly taken care of the problem that eventually occurred.

What they did at that point was brought up the air pressure to within 15 pounds of pressure, within up to 90, which they're required to do. And then they took off.

They went about their mandatory repairs and checks at the time after the train stopped. But in this

situation, there was also a subsequent event that led to not inconveniencing the Metra passengers and delaying them any further and clearing the crossings.

I cannot find in this set of facts a way to differentiate between the Federally-mandated inspection requirements and things that were within the control of the defendant. I don't see that there was any testimony given that there was one thing over the other. Therefore, I believe and -- and I'm going to make a finding of guilty on all three of the cases for the full amount of time that

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the blockings were crossed -- excuse me -- that the crossings were blocked.

And I don't believe, on this set of facts, that the FRSA would preempt the Local Ordinance, based on these facts that were given to me today. Therefore, on 05 OV 278, there's going to be a finding of guilty. There will be a one-year period of court supervision and a $500.00 fine total.

MR. LA LUZERNE: Judge, I think you're obligated, under the Statute, to impose the -- I'm not sure what the minimum is on that, Judge. But it has to be the minimum fine, plus the court cost.

THE COURT: Oh, the Statute requires plus cost?

MR. LA LUZERNE: Yes, Judge.

THE COURT: Defense agrees with that?

MR. BARRON: I'm sorry. What was that, Judge?

THE COURT: That the minimum fine, if I grant the minimum fine, it has to be plus cost.

MR. BARRON: Yes.

THE COURT: All right. It will be $500.00 plus cost.

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On 05 OV 277, there will be a finding of guilty, a one-year period of court supervision, $4,500.00, plus the court costs.

On 05 OV 276, there's going to be a finding of guilty, the one-year period of court supervision. And I believe that that fine is 14,000 plus court costs.

Is there anything else we need to do?

MR. BARRON: No, sir.

THE COURT: Mr. LaLuzerne?

MR. LA LUZERNE: Nothing else from Village, Judge.

THE COURT: All right. Thank you.

MR. BARRON: Thank you, Judge.

MR. LA LUZERNE: Off the record, Judge.

(Which were all the proceedings had in the above-entitled cause.)

APPENDIX D

Title 49: Transportation
PART 213—TRACK SAFETY STANDARDS
Subpart A—General

§ 213.9 Classes of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section and §§213.57(b), 213.59(a), 213.113(a), and 213.137(b) and (c), the following maximum allowable operating speeds apply—

[In miles per hour]

Over track that meets all of the requirements prescribed in this part for—	The maximum allowable operating speed for freight trains is—	The maximum allowable operating speed for passenger trains is—
Excepted track	10	N/A
Class 1 track	10	15
Class 2 track	25	30
Class 3 track	40	60
Class 4 track	60	80
Class 5 track	80	90

* * *

Subpart C—Inspection and Testing Requirements

§ 232.211 Class III brake tests-trainline continuity inspection.

(a) A Class III brake test shall be performed on a train by a qualified person, as defined in §232.5, to test the train brake system when the configuration of the train has changed in certain ways. In particular, a Class III brake test shall be performed at the location where any of the following changes in the configuration of the train occur:

* * *

(2) Where a car or a block of cars is removed from the train with the consist otherwise remaining intact;

* * *

(b) A Class III brake test shall consist of the following tasks and requirements:

* * *

(4) Before proceeding the operator of the train shall know that the brake pipe pressure at the rear of freight train is being restored.

* * *

[66 FR 4193, Jan. 17, 2001, as amended at 67 FR 17583, Apr. 10, 2002]

PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY

Subpart C—Response to Reports of Warning System Malfunction

§ 234.105 Activation failure.

Upon receipt of a credible report of warning system malfunction involving an activation failure, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing by taking the following actions:

(a) Prior to any train's arrival at the crossing, notify the train crew of the report of activation failure and notify any other railroads operating over the crossing;

(b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and

(c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see appendix B for a summary chart of alternative means of warning):

(1)(i) If an appropriately equipped flagger provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

(ii) If at least one uniformed law enforcement officer (including a railroad police officer)

provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

(2) If an appropriately equipped flagger provides warning for highway traffic, but there is not at least one flagger providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.

(3) If there is not an appropriately equipped flagger or uniformed law enforcement officer providing warning to highway traffic at the crossing, each train must stop before entering the crossing and permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing, and the flagging crewmember may reboard the locomotive before the remainder of the train proceeds through the crossing.

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

§ 234.106 Partial activation.

Upon receipt of a credible report of a partial activation, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing in the same manner as required for false activations (§234.107).

§ 234.107 False activation.

Upon receipt of a credible report of a false activation, a railroad having maintenance responsibility for the highway-rail grade crossing warning system shall promptly initiate efforts to warn highway users and railroad employees at the crossing by taking the following actions:

(a) Prior to a train's arrival at the crossing, notify the train crew of the report of false activation and notify any other railroads operating over the crossing;

(b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and

(c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see Appendix B for a summary chart of alternative means of warning).

(1)(i) If an appropriately equipped flagger is providing warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

(ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

(2) If there is not an appropriately equipped flagger providing warning for each direction of highway traffic, or if there is not at least one uniformed law enforcement officer providing warning, trains with the locomotive or cab car leading, may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing. In the case of a shoving move, a crewmember shall be on the ground to flag the train through the crossing.

(3) In lieu of complying with paragraphs (c) (1) or (2) of this section, a railroad may temporarily take the warning system out of service if the railroad complies with all requirements of §234.105, "Activation failure."

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.